

UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

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BRYAN P. BONHAM

Case No. 2:17-cv-02460-JCM-VCF

Plaintiff,

SCREENING ORDER

v.

BOB BEAR, *et al.*,

Defendants.

14 Plaintiff, who is a prisoner in the custody of the Nevada Department of Corrections
15 ("NDOC"), has submitted a civil rights complaint pursuant to 42 U.S.C. § 1983 and has
16 filed an application to proceed *in forma pauperis*. (ECF No. 1-1, 4). The court now
17 screens plaintiff's civil rights complaint pursuant to 28 U.S.C. § 1915A.

I. SCREENING STANDARD

1 (2) that the alleged violation was committed by a person acting under color of state law.
2 See *West v. Atkins*, 487 U.S. 42, 48 (1988).

3 In addition to the screening requirements under § 1915A, pursuant to the Prison
4 Litigation Reform Act (PLRA), a federal court must dismiss a prisoner's claim if "the
5 allegation of poverty is untrue" or if the action "is frivolous or malicious, fails to state a
6 claim on which relief may be granted, or seeks monetary relief against a defendant who
7 is immune from such relief." 28 U.S.C. § 1915(e)(2). Dismissal of a complaint for failure
8 to state a claim upon which relief can be granted is provided for in Federal Rule of Civil
9 Procedure 12(b)(6), and the court applies the same standard under § 1915 when
10 reviewing the adequacy of a complaint or an amended complaint. When a court
11 dismisses a complaint under § 1915(e), the plaintiff should be given leave to amend the
12 complaint with directions as to curing its deficiencies, unless it is clear from the face of
13 the complaint that the deficiencies could not be cured by amendment. See *Cato v. United*
14 *States*, 70 F.3d 1103, 1106 (9th Cir. 1995).

15 Review under Rule 12(b)(6) is essentially a ruling on a question of law. See
16 *Chappel v. Lab. Corp. of America*, 232 F.3d 719, 723 (9th Cir. 2000). Dismissal for failure
17 to state a claim is proper only if it is clear that the plaintiff cannot prove any set of facts in
18 support of the claim that would entitle him or her to relief. See *Morley v. Walker*, 175 F.3d
19 756, 759 (9th Cir. 1999). In making this determination, the court takes as true all
20 allegations of material fact stated in the complaint, and the court construes them in the
21 light most favorable to the plaintiff. See *Warshaw v. Xoma Corp.*, 74 F.3d 955, 957 (9th
22 Cir. 1996). Allegations of a *pro se* complainant are held to less stringent standards than
23 formal pleadings drafted by lawyers. See *Hughes v. Rowe*, 449 U.S. 5, 9 (1980). While
24 the standard under Rule 12(b)(6) does not require detailed factual allegations, a plaintiff
25 must provide more than mere labels and conclusions. *Bell Atlantic Corp. v. Twombly*,
26 550 U.S. 544, 555 (2007). A formulaic recitation of the elements of a cause of action is
insufficient. *Id.*

27 Additionally, a reviewing court should "begin by identifying pleadings [allegations]
28 that, because they are no more than mere conclusions, are not entitled to the assumption

1 of truth.” *Ashcroft v. Iqbal*, 556 U.S. 662, 679 (2009). “While legal conclusions can
2 provide the framework of a complaint, they must be supported with factual allegations.”
3 *Id.* “When there are well-pleaded factual allegations, a court should assume their veracity
4 and then determine whether they plausibly give rise to an entitlement to relief.” *Id.*
5 “Determining whether a complaint states a plausible claim for relief . . . [is] a context-
6 specific task that requires the reviewing court to draw on its judicial experience and
7 common sense.” *Id.*

8 Finally, all or part of a complaint filed by a prisoner may therefore be dismissed
9 *sua sponte* if the prisoner’s claims lack an arguable basis either in law or in fact. This
10 includes claims based on legal conclusions that are untenable (e.g., claims against
11 defendants who are immune from suit or claims of infringement of a legal interest which
12 clearly does not exist), as well as claims based on fanciful factual allegations (e.g.,
13 fantastic or delusional scenarios). See *Neitzke v. Williams*, 490 U.S. 319, 327-28 (1989);
14 see also *McKeever v. Block*, 932 F.2d 795, 798 (9th Cir. 1991).

15 II. SCREENING OF COMPLAINT

16 In the complaint, plaintiff sues multiple defendants and seeks monetary damages
17 for events that took place while he was incarcerated by the NDOC. (ECF No. 1-1 at 1,
18 15). He sues Bob Bear, Jackie Crawford, James Egnaseo, Leon Hatcher, Donald
19 Denison, Cordelia Dunfield, James Allen, Norman Ziola, Michael Harris, Robert Seiler,
20 Tami Bass, Brian Williams, Sr., Dwayne Neve, Connie Bisbee, Tonya Corda, Adam
21 Endel, Susan Jackson, Eddie Gray, Michael Keller, Maurice Silva, and Howard Skulnek.
22 (*Id.* at 2-7). Plaintiff alleges two counts. (*Id.* at 8-11).

23 The complaint alleges the following: On February 4, 1999, plaintiff was sentenced
24 in the Eighth Judicial District Court in Clark County, Nevada for one count of battery with
25 intent to commit a crime and one count of attempted sexual assault. (ECF No. 1-1 at 8).
26 His sentences were to be served concurrently for a term of 24-72 months. (*Id.*) Under
27 Nevada law, plaintiff should have been given statutory good time credits, which would
28 have made him eligible to see the parole board sooner. (*Id.*) However, he was not given

1 the 180 days of good time credits that he was entitled to have, thereby delaying the time
2 when he would see the parole board. (*Id.*)

3 On April 29, 2010, plaintiff was sentenced in the Eighth Judicial District Court in
4 Clark County, Nevada to a term of 28-72 months. (*Id.* at 10.) Plaintiff again alleges that
5 he did not receive the statutory good time credits that he was entitled to under state law.
6 (*Id.*) This again delayed his parole hearing. (*Id.*)

7 The complaint alleges that this conduct violated plaintiff's Eighth Amendment right
8 against cruel and unusual punishment, his Fifth Amendment and Fourteenth Amendment
9 right to due process, and his Fourteenth Amendment right against breach of contract/plea
10 agreement.¹ (*Id.* at 8, 10). The court construes these allegations as a Fourteenth
11 Amendment due process claim.

12 A mere error of state law is not a denial of due process. *Swarthout v. Cooke*, 562
13 U.S. 216, 222 (2011). Thus, the alleged error in properly applying credits under Nevada
14 law is not sufficient to constitute a denial of due process. See *Young v. Williams*, No.
15 2:11-CV-01532-KJD, 2012 WL 1984968, at *3 (D. Nev. June 4, 2012) (holding that
16 alleged error in applying good time credits to sentence was an error of state law that did
17 not constitute a due process violation).

18 Furthermore, the alleged delay in the parole hearing also does not state a colorable
19 due process violation. In order to state a due process claim, a plaintiff must adequately
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21 ¹ Plaintiff does not allege the existence or terms of a plea agreement. Furthermore, to state a claim under
22 42 U.S.C. § 1983, a plaintiff must allege that a right secured by the Constitution or laws of the United States
23 was violated. *West v. Atkins*, 487 U.S. 42, 48 (1988). Section 1983 does not provide a cause of action for
24 violations of state law. See *Galen v. County of Los Angeles*, 477 F.3d 652, 662 (9th Cir. 2007). A claim for
25 breach of a plea agreement is a state law claim for breach of contract and therefore is not cognizable under
26 § 1983. *Tomei v. Ross*, No. CIV.09-00489 SOM-LEK, 2009 WL 3824742, at *6 (D. Haw. Nov. 16, 2009).
27 State law claims generally should be brought in state court. Although this court does not usually have
original jurisdiction over state law claims like this one, under certain limited conditions it may choose to
exercise supplemental jurisdiction over a plaintiff's state-law claims if they "are so related to claims in the
action within such original jurisdiction that they form part of the same case or controversy under Article III
of the United States Constitution." 28 U.S.C. § 1337(a). However, this court cannot exercise supplemental
jurisdiction over any state law claim unless the plaintiff states a cognizable federal claim. Cf. 28 U.S.C. §
1337(a); *Herman Family Revocable Trust v. Teddy Bear*, 254 F.3d 802, 805 (9th Cir. 2001). Because
plaintiff's complaint in the instant case does not state a colorable federal claim, the court will dismiss the
state law claim without prejudice and without leave to amend.

allege the deprivation of life, liberty, or property. *Brittain v. Hansen*, 451 F.3d 982, 991–92 (9th Cir. 2006). There is no independent constitutional right to parole. *Swarthout v. Cooke*, 131 S. Ct. 859, 862 (2011). A state may create a liberty interest in parole, but the mere presence of a parole system in a state does not give rise to a constitutionally protected liberty interest in parole. *Bd. of Pardons v. Allen*, 482 U.S. 369, 373 (1987); *Moor v. Palmer*, 603 F.3d 658, 661 (9th Cir. 2010). A state creates a liberty interest in parole only when its statutory parole provisions use mandatory language creating a presumption that parole release will be granted and limits the parole board's discretion. *Allen*, 482 U.S. at 373-81. Nevada's statutory parole scheme generally does not use mandatory language and hence does not create a constitutionally cognizable liberty interest in parole when the parole board is deciding whether to exercise its discretion to grant parole. *Moor*, 603 F.3d at 661-62. Where there is no liberty interest in parole, there is no liberty interest in parole eligibility. *Fernandez v. Nevada*, No. 3:06-CV-00628-LRH-RA, 2009 WL 700662, at *10 (D. Nev. Mar. 13, 2009).

Here, although Plaintiff does not allege that he was entitled to parole at an earlier date, he does allege that he was deprived of an earlier parole eligibility date. Plaintiff does not have a liberty interest in an earlier parole date. Because Plaintiff does not adequately allege a liberty interest, he fails to state a colorable due process claim. The Court therefore will dismiss this claim with prejudice, as amendment would be futile.

III. CONCLUSION

For the foregoing reasons, IT IS ORDERED that the clerk of the court shall file the complaint (ECF No. 1-1) and send plaintiff a courtesy copy of the complaint.

IT IS FURTHER ORDERED that the due process claims are dismissed with prejudice, as amendment would be futile.

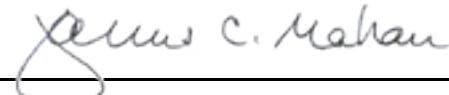
IT IS FURTHER ORDERED that, to the extent plaintiff alleges a breach of contract claim, that claim is dismissed without prejudice and without leave to amend.

1 IT IS FURTHER ORDERED that a decision on the application to proceed *in forma*
2 *pauperis* (ECF No. 4) is denied as moot.

3 IT IS FURTHER ORDERED that an appeal would not be taken in good faith.

4 IT IS FURTHER ORDERED that the clerk of the court will enter judgment
5 accordingly.

6 DATED August 27, 2018.

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9 UNITED STATES DISTRICT JUDGE
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